

### REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed March 18, 2008 (Paper No. 20080301). Upon entry of this response, claims 1-16 and 114-164 are pending in the application. In this response, claim 1 has been amended, claims 114-164 have been added, and claims 17-21 and 52-63 have been cancelled. Applicant respectfully requests that the amendments being filed herewith be entered and request that there be reconsideration of all pending claims.

1. Rejection of Claims 1-7, 15-21, and 52-63 under 35 U.S.C. §103

Claims 1-7, 15-21, and 52-63 are rejected under §103(a) as allegedly obvious over *Ellis et al.* (2002/0028208) in view of *Miura et al.* (6,996,837) and *Rakib et al.* (2004/0172658). Applicant respectfully traverses this rejection. It is well established at law that, for a proper rejection of a claim under 35 U.S.C. §103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest (either implicitly or explicitly) all elements/features/steps of the claim at issue. *See, e.g., In re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

a. Independent Claim 1

Claim 1 is amended to recite “an encoder supporting a plurality of encoding formats and coupled to the first tuner and receiving the first tuned television signal and digitally encoding the first tuned television signal having one of the encoding formats into an encoded signal having another one of the encoding formats, and further configured to operate in accordance with a parameter describing quality of the encoded signal, and further configured to change the parameter after a time period such that the quality of the encoded signal is improved”. Applicant

respectfully submits that the proposed combination of *Ellis et al.* in view of *Miura et al.* and *Rakib et al.* fails to teach, disclose or suggest at least these features.

Neither *Ellis et al.* nor *Miura et al.* discloses, teaches, or suggests digitally encoding a signal having one encoding format into a signal having another encoding format. *Rakib et al.* does disclose a "transcoder 352 is used to translate the bit rate of the compressed video down to a lower rate when necessary because of current loading conditions on the LAN" (para. 0237). However, even assuming (for the sake of argument) that translating bit rate is the same as encoding from one format to another, *Ellis et al.*, *Miura et al.* and *Rakib et al.* do not (singly or in combination) teach "an encoder....configured to operate in accordance with a parameter describing quality of the encoded signal, and further configured to change the parameter after a time period such that the quality of the encoded signal is improved".

Accordingly, the proposed combination of *Ellis et al.* in view of *Miura et al.* and *Rakib et al.* does not teach at least the above-described features present in amended claim 1. Therefore, a *prima facie* case establishing an obviousness rejection has not been made, and the rejection should be withdrawn.

**b. Dependent Claims 2-7 and 15-16**

Since independent claim 1 is allowable, Applicant respectfully submits that claims 2-7 and 15-16 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claims 2-7 and 15-16 be withdrawn.

**c. Claims 17-21 and 52-63**

Claims 17-21 and 52-63 are cancelled without prejudice, waiver, or disclaimer, and the rejection of these claims is therefore rendered moot. Applicant takes this action merely to reduce the number of disputed issues and to facilitate early allowance and issuance of other claims in the present application. Applicant reserves the right to pursue the subject matter of

these cancelled claims in a continuing application, if Applicant so chooses, and does not intend to dedicate any of the cancelled subject matter to the public. Applicant expressly reserves the right to present cancelled claims 17-21 and 52-63, or variants thereof, in continuing applications to be filed subsequent to the present application.

2. Rejection of Claims 8-14 under 35 U.S.C. §103

Claims 8-14 are rejected under §103(a) as allegedly obvious over *Ellis et al.* (2002/0028208) in view of *Miura et al.* (6,996,837) and *Rakib et al.* (2004/0172658) and *Der Schaar et al.* (6,697,426). Applicant respectfully traverses this rejection. The addition of *Der Schaar et al.* does not cure the deficiencies of the proposed combination of *Ellis et al.*, *Miura et al.*, and *Rakib et al.*, discussed above in connection with independent claim 1. Therefore, since independent claim 1 is allowable, Applicant respectfully submits that claims 8-14 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claims 8-14 be withdrawn.

3. Alleged Official Notice and Well Known Findings

The Office Action makes the following findings of Official Notice:

Official Notice is taken that encoding format includes H.263 is well known in the art. For example, encoding videoconferencing as low bit rate compressed format using H.263.

(p. 17, in connection with claim 58)

Official Notice is taken that providing encoding parameter in the transmitted signal for enabling the receiving device to decode the transmitted signal using multiple decoding algorithms according to the encoding parameter is well known in the art. For example, transmitting encoding parameter including encoding description in the transmitted signal, where the encoding description enables the receiving device to identify and decode the transmitted signal according to the encoding description.

(p. 22, in connection with claim 14)

Applicant respectfully traverses these findings and submits that these features should not be considered well known, for at least the specific and particular reason that the Office Action does

not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions, as required. Applicant additionally submit that particularly in the context of the claimed combinations, the subject matter in question is too complex for a reasonably skilled person to consider it to be well known to the point that no additional evidence is needed.

4. Newly Added Claims

Applicant submits that new claims 114-164 are allowable over the cited references. Specifically, independent claim 114 is allowable for at least the reason that the cited references, alone or in combination, do not disclose, teach, or suggest the feature of "an encoder supporting a plurality of encoding formats and configured to digitally encode the tuned television signal having one of the encoding formats into an encoded signal having another one of the encoding formats, and further configured to operate in accordance with a parameter describing quality of the encoded signal, and further configured to change the parameter after a time period such that the quality of the encoded signal is improved". Independent claim 131 is allowable for at least the reason that the cited references, alone or in combination, do not disclose, teach, or suggest the feature of "digitally encoding the tuned television signal having one of a plurality of encoding formats into an encoded signal having another one of the encoding formats, in accordance with a parameter describing quality of the encoded signal". Independent claim 148 is allowable for at least the reason that the cited references, alone or in combination, do not disclose, teach, or suggest the feature of "a computer readable medium encoded with computer executable instructions operable to...digitally encode the tuned television signal having one of a plurality of encoding formats into an encoded signal having another one of the encoding formats, in accordance with a parameter describing quality of the encoded signal". Dependent claims 115-130, 132-147, and 149-164 are allowable over the cited references for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d

1596, 1598 (Fed. Cir. 1988). Therefore, Applicant requests the Examiner to enter and allow the above new claims.

**CONCLUSION**

Applicant respectfully requests that all outstanding objections and rejections be withdrawn and that this application and presently pending claims 1-16 and 114-164 be allowed to issue. Any statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. If the Examiner has any questions or comments regarding Applicant's response, the Examiner is encouraged to telephone Applicant's undersigned counsel.

Respectfully submitted,

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